IN THE HONOURABLE CHHATTISGARH HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION No. 119 / 2001.

(WRIT PETITION UNDER ARTICLE 226/ 227 OF THE CONSTITUTION OF INDIA)

PETITIONER: Gorelal S/O Ramadheen, aged about 35 years, Cast: Gond, R/O Ompur colony, Rajgamar, Tah & Dist: Korba, Chhattisgarh.

Versus

Respondents:

01. South Eastern Coalfields Limited, through it's Chairman cum managing Director, SECL HQ, Seepat Road, Bilaspur, Chhattisgarh.

02. Tahsildar, ~~Korba~~ KATGHORA, Dist: Korba, Chhattisgarh.

03. Dy. General Manager, Rajgamar Colliery, Korba Area of SECL, Tah & Dist: Korba, C.G.

04. Inquiry Officer/ Personnel Manager, Korba Area of SECL, Tah & Dist: Korba, C.G.

05. State of Chhattisgarh through ~~Police Station: Kusmunda, Tah: Katghora, Dist: Korba, Chhattisgarh.~~ the Chief Secretary, Govt. D.K.S. Bhawan, Raipur, C.G.

Amended as per the order dtd. 26.04.2001.

WRIT PETITION UNDER ARTICLE 226/ 227 OF THE CONSTITUTION OF INDIA.

P.R. No. 119/1 Presented by Shri K.K. Gupta Date

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W.P. No. 113/2001

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	10.3.2004. Petitioner by Shri K.K.Naik, Advocate. Respondents No. 1 to 4 by Shri R.S.Jaiswal, Advocate The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India with the prayer that the enquiry proceedings conducted by the respondent No.4 in compliance of the directions dated 16.6.2000 issued by the respondent No.2 be stayed and to also stay the suspension order dated 22.8.2001 passed by the respondent No.3. The petitioner's case is that he is an employee of the Rajgamar Colliery of Korba area of S.E.C.L. He is 'Gond' by caste, he married with a inter-caste lady belonging to other community. He resides with his family in Ompur colony of Rajgamar Colliery. One employee of Rajgamar Colliery Hetram Sahu attempted to commit rape on the applicant's wife, therefore he made a complaint before the outpost Rajgamar of Police Station-Korba and a case under section 354 of the I.P.C. was registered against Hetram Sahu. The parents of the petitioner were very much poor persons belonging to village-Chainpur, Tahsil- Katghora, they were doing the jobs in the house and agriculture fields belonging to Late Bahadur Chandra of village-Kashigarh, District- Janjgir Champa. The father of the petitioner late Ramadheen Gond died at early age. Thereafter Bahadur Chandra being a kind person maintained the petitioner alike his sons, he also arranged for the marriage of the petitioner in his own community with a girl belonging to a very poor family belonging to	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Chandra community. Certificates pertaining to paternity, caste and domicile have been filed as Annexure P/1.

Later on due to poverty and other problems the petitioner turned back to his native place and started working as contract labour in various collieries of Kusmunda and Gevera area of S.E.C.L. At Chainpur the petitioner's family was having few pieces of land which were acquired by the S.E.C.L. mines therefore being a dependent the petitioner was provided with compensatory appointment in lieu of the said acquired lands belonging to his family. The petitioner was later posted in Rajgamar Colliery where he is posted till date.

Hetram Sahu who attempted to commit rape upon the wife of the petitioner, after registration of the criminal case in order to forcibly obtain compromise in the said criminal case, by all means tried to harass the petitioner and his family members resulting in the circumstance that the petitioner was forced to change his quarter. After failing in obtaining compromise in the said criminal case said Hetram misguided and obtained a false certificate from his brother-in-law who was Sarpanch of village-Kashigarh and thereafter he made false complaint against the petitioner. Thereafter Kusmunda Police registered a criminal case against the petitioner which is pending till date and on the basis of the said false complaint made regarding his caste, birth and paternity etc. with the Respondents No. 2 and 3. Hetram Sahu somehow managed the respondent No.2 in his favour who not only threatened the petitioner but also without having any right and authority to do so directed the Respondent No.3 to take disciplinary action against the petitioner.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The Respondent No.3 being influenced by the direction given by the Respondent No.2 not only issued show cause notice dated 22.8.2000 but also immediately placed the petitioner under suspension. According to the settled law departmental enquiry during the pendency of the criminal proceedings should be stayed. The petitioner is facing criminal proceeding arising out of the registration of Crime No. 469/99 regarding the same nature of allegations on the other hand departmental enquiry is also pending on the directions of the Respondent No.2 for the same allegation and the petitioner will be supposed to disclose the defence in departmental enquiry which is available to him in the criminal matter, therefore conducting departmental enquiry is bad in law and is total violation of the rights conferred to the petitioner under the Constitution of India. The petitioner submitted all the documents and certificates, which prove his innocence, but because of the illegal and arbitrary directions of the Respondent No.2 the departmental enquiry is being conducted and the legal principles settled by the Hon'ble Supreme Court is being violated by the department.

Return has been filed on behalf of the Respondents No. 1, 3 and 4 in which it has been mentioned that the petition has been filed on suppression of material facts right from his cause title and by making false allegation against the respondents. The petitioner misrepresented himself before the respondents that he is son of Late Ramdeen who is 'Gond' by caste and requested for an appointment on the post of Loader. His name for employment was nominated by one Chandra Bhan Singh as land oustee against the Land Khata No. 338, Khasra

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No. 720/6, area 0.18 decimal being acquired by S.E.C.L. On the basis of the aforesaid submissions the petitioner was appointed as Piece Rated Loader being a land oustee of Gavera area vide letter dated 4.3.1994 and was posted at Rajgamar Colliery.

At the time of appointment the petitioner submitted false certificate of caste- Gond, Resident of – Chainpur, Hardi Bazar, Tahsil- Katghora. The appointment of the petitioner was subject to verification of character and antecedents. The S.D.M. Katghora vide letter dt. 16.6.2000 intimated that the petitioner's real name is Gorelal Chandra S/o Bahadur Chandra, Caste- Chanahu and he is resident of Village- Kashirgarh, P.S. Jaijaipur, Tahsil and District- Janjgir Champa. Thus the petitioner has misrepresented the S.E.C.L. and fraudulently obtained employment by committing mischief and producing false documents showing that he is son of Ramadheen whereas he is son of Bahadur Chandra. The petitioner submitted false affidavit and domicile certificate and caste certificate therefore a report was lodged against him at P.S. Kusmunda which is registered at Crime No. 469/99 wherein he has confessed the charges levelled against him. The enquiry was conducted by the Patwari who confirmed that Gorelal Chandra was never residing at Village- Chainpur and he has fraudulently obtained the caste and domicile certificates impersonating himself as son of Ramadeen Gond for securing employment. The disciplinary action has been initiated against the petitioner. The charge sheet was issued on 29.8.2000 and the enquiry is in progress. The departmental enquiry during the pendency of criminal proceedings should not be stayed. The petitioner has made

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Tahsildar – Korba as Respondent No.2 though the land in question is situated at village-Chainpur, which comes under the jurisdiction of S.D.M. Katghora. The S.D.M. Katghora vide letter dated 16.6.2000 intimated that the petitioner's real name is Gorelal Chandra S/o Bahadur Chandra, Caste- Chanahu R/o Village – Kashirgarh, P.S. Jaijaipur, Tahsil and District- Janjgir Champa. As the petitioner has misrepresented and obtained appointment on the basis of false and forged documents therefore the petition may be dismissed.

I have heard learned counsel for the parties.

Learned counsel for the petitioner submitted that since a criminal proceeding is pending against the petitioner on the same facts therefore the departmental enquiry should not be allowed to be continued. If the same is allowed to continue then he will be required to disclose his defence and that will cause serious prejudice to the petitioner and that he will not be in a position to defend the criminal case properly.

On the other hand Mr. R. S. Jaiswal, learned counsel for the Respondents No. 1 to 4 argued that the departmental enquiry is already complete and final order is pending decision because of the stay granted by this Court. Therefore, there is now no question arises for the petitioner for disclosing the defence as the departmental enquiry has already been completed. He submitted that the departmental enquiry and criminal proceedings are distinct proceedings and the departmental enquiry should not be stayed. In this connection he placed reliance on the judgment of the Hon'ble Apex Court reported in (1996) 6 S.C.C. 417 (State of Rajasthan Vs.

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B.K. Meena and others). In para 14 the Hon'ble Apex Court has held that "there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasized, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that "the defence of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. One of the contending considerations is that the disciplinary enquiry cannot be and should not be delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage.

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The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is further held that "the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

In view of the above legal position if we look into the facts of the present case in the first instance as argued by Mr. Jayaswal that the enquiry has already been completed therefore there should be no grudge to the petitioner as the defence has already been disclosed and now there is no question of causing serious prejudice to the right of the petitioner and in the present case the misconduct which has been

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alleged against the petitioner is that he obtained employment based on the false certificates and enquiry is to be conducted into that aspect as to whether he obtained the employment based on the false certificates and if it is found then the question will be that as to what punishment should be awarded to the petitioner. Whereas in the criminal proceedings it is to be examined whether the petitioner has committed any offence or not and as to what punishment should be awarded. Therefore as the enquiry is already complete, as such now nothing remains to disclose the defence.

In view of the above discussion, I do not find any force in this petition which is liable to be dismissed and is dismissed.

Sd/-
L.C.BHADOO
Judge

Thakur

[पीछे देखिये